



DEPARTMENT OF THE TREASURY

Financial Crimes Enforcement Network

Agency Information Collection Activities; Proposed Renewal; Comment Request; Renewal Without Change of Regulations Requiring Additional Records to be Made and Retained by Dealers in Foreign Exchange and Additional Records to be Made and Retained by Brokers or Dealers in Securities

AGENCY: Financial Crimes Enforcement Network (FinCEN), Treasury.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, FinCEN invites comments on the proposed renewal, without change, of a currently approved information collections found in existing Bank Secrecy Act regulations. Specifically, the regulations require dealers in foreign exchange and brokers or dealers in securities to secure and maintain a record of the taxpayer identification number for individuals for whom a transaction or brokerage account is opened, or for whom a line of credit is extended, subject to certain exceptions. The regulations also require that the dealers in foreign exchange and brokers or dealers in securities retain originals or copies of specified documents relating to account and transaction records. Although no changes are proposed to the information collections themselves, this request for comments covers a future expansion of the scope of the annual hourly burden and cost estimate associated with these regulations. This request for comments is made pursuant to the Paperwork Reduction Act of 1995.

DATES: Written comments are welcome, and must be received on or before [INSERT DATE 60 DAYS AFTER THE DATE OF PUBLICATION OF THIS DOCUMENT IN THE *FEDERAL REGISTER*.]

ADDRESSES: Comments may be submitted by any of the following methods:

- Federal E-rulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments. Refer to Docket Number FINCEN-2021-0003 and the specific Office of Management and Budget (OMB) control numbers 1506-0052 and 1506-0053.

- Mail: Policy Division, Financial Crimes Enforcement Network, P.O. Box 39, Vienna, VA 22183. Refer to Docket Number FINCEN-2021-0003 and OMB control numbers 1506-0052 and 1506-0053.

Please submit comments by one method only. Comments will also be taken into account in FinCEN's review of existing regulations, consistent with by Treasury's 2011 Plan for Retrospective Analysis of Existing Rules. All comments submitted in response to this notice will become a matter of public record. Therefore, you should submit only information that you wish to make publicly available.

FOR FURTHER INFORMATION CONTACT: The FinCEN Regulatory Support Section at 1-800-767-2825 or electronically at frc@fincen.gov.

SUPPLEMENTARY INFORMATION:

I. Statutory and Regulatory Provisions

The legislative framework generally referred to as the Bank Secrecy Act (BSA) consists of the Currency and Financial Transactions Reporting Act of 1970, as amended by the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (USA PATRIOT Act) (Public Law 107–56) and other legislation. The BSA is codified at 12 U.S.C. 1829b, 12 U.S.C. 1951–1959, 31 U.S.C. 5311–5314 and 5316–5332, and notes thereto, with implementing regulations at 31 CFR Chapter X.

The BSA authorizes the Secretary of the Treasury, *inter alia*, to require financial institutions to keep records and file reports that are determined to have a high degree of usefulness in criminal, tax, and regulatory matters, or in the conduct of intelligence or

counter-intelligence activities to protect against international terrorism, and to implement anti-money laundering (AML) programs and compliance procedures.¹ Regulations implementing the BSA appear at 31 CFR Chapter X. The authority of the Secretary to administer the BSA has been delegated to the Director of FinCEN.²

a. 31 CFR 1022.410 – Additional records to be made and retained by dealers in foreign exchange.

31 CFR 1022.410(a) requires a dealer in foreign exchange to make and maintain a record of the taxpayer identification number of certain persons for whom a transaction account is opened or a line of credit is extended, within 30 days of opening such an account or extending such a line of credit, or longer if the person has applied for a taxpayer identification or social security number. A dealer in foreign exchange must also maintain a list containing the names, addresses, and account or credit line numbers of those persons from whom it has been unable to secure such information despite reasonable efforts. A dealer in foreign exchange need not attempt to secure such information if the person is an agency or instrumentality of a Federal, state, local, or foreign government using an account for public funds, one of several categories of aliens that are not permanent resident aliens, or an unincorporated subordinate unit of a tax exempt organization covered by a group exemption letter.

Under 31 CFR 1022.410(b), a dealer in foreign exchange must also retain the original or a copy of nine types of documents: (1) statements of accounts from banks, including documents representing the entries reflected on such statements; (2) daily work records, including documents needed to identify and reconstruct currency transactions with customers and foreign banks; (3) a record of each exchange of currency involving

¹ Section 358 of the USA PATRIOT Act added language expanding the scope of the BSA to intelligence or counter-intelligence activities to protect against international terrorism. Section 6101 of the Anti-Money Laundering Act of 2020 (“the AML Act”) added language further expanding the scope of the BSA but did not disturb these longstanding purposes. The AML Act is Division F of Pub. L. 116-283 (January 1, 2021).

² Treasury Order 180-01 (re-affirmed Jan. 14, 2020).

transactions in excess of \$1,000, including the customer's name and address (and passport or tax identification number unless received by mail or common carrier), the date and amount of the transaction, and the currency name, country, and total amount of each foreign currency; (4) signature cards or other documents evidencing signature authority over each deposit or security account, containing specified items of information about the customer (including a record of the actual owner of the account if customer accounts are maintained in a code name); (5) each item, including checks, drafts, and transfers of credit, of more than \$10,000 remitted or transferred to a person, account, or place outside the United States; (6) a record of each receipt of currency, other monetary instruments, investment securities and checks, and of each transfer of funds or credit, of more than \$10,000 received on any one occasion directly and not through a domestic financial institution, from any person, account, or place outside the United States; (7) records prepared or received by the dealer in foreign exchange in the ordinary course of business that would be needed to reconstruct an account and trace a check in excess of \$100 deposited in such an account through its internal recordkeeping system to its depository institution, or to supply a description of such a deposited check; (8) a record of the name, address and taxpayer identification number of any person presenting a certificate of deposit for payment, as well as a description of the instrument and the date of the transaction; and (9) a system of books and records that enables the dealer in foreign exchange to prepare an accurate balance sheet and income statement. To the extent that these records include originals or copies of checks, drafts, monetary instruments, investment securities, or other similar instruments, copies of front and back of such instruments must generally be retained.³ The required records must be maintained for five years.⁴

³ 31 CFR 1010.430(a).

⁴ 31 CFR 1010.430(d).

b. 31 CFR 1023.410 – Additional records to be made and retained by brokers or dealers in securities.

Until October 1, 2003, 31 CFR 1023.410(a) required a broker or dealer in securities to make a record of certain information. Until October 1, 2008, a broker or dealer in securities was required to maintain all such records, as well as a list containing the names, addresses, and account or credit line numbers of those persons from whom it had been unable to secure the required information despite reasonable efforts. The customer identification program requirement for brokers or dealers in securities has effectively superseded these requirements.⁵

Under 31 CFR 1023.410(b), a broker or dealer in securities must retain an original or copy of: (1) each document granting signature or trading authority over each customer's account; (2) a record of each remittance or transfer of funds, currency, checks, other monetary instruments, investment securities, or credit, of more than \$10,000 to a person, account, or place outside the United States; (3) a record of each receipt of currency, other monetary instruments, investment securities, or checks, and of each transfer of funds or credit, of more than \$10,000 on any one occasion, not through a domestic financial institution, from any person, account, or place outside the United States; and (4) each record described in paragraphs (1), (2), (3), (5), (6), (7), (8), and (9) of 17 CFR 240.17a-3(a), covering records to be made by certain exchange members, brokers and dealers as identified in 17 CFR 240.17a-3. To the extent that these records include originals or copies of checks, drafts, monetary instruments, investment securities, or other similar instruments, copies of front and back of such instruments must generally be retained.⁶ The required records must be maintained for five years.⁷

⁵ 31 CFR 1023.220. The burden associated with these requirement is calculated under OMB control number 1506-0034.

⁶ 31 CFR 1010.430(a).

⁷ 31 CFR 1010.430(d).

II. Paperwork Reduction Act of 1995 (PRA)⁸

Title: Additional records to be made and retained by dealers in foreign exchange and additional records to be made and retained by brokers or dealers in securities (31 CFR 1022.410 and 31 CFR 1023.410).

OMB Control Numbers: 1506-0052 and 1506-0053.

Report Number: Not applicable.

Abstract: FinCEN is issuing this notice to renew the OMB control numbers for record-keeping requirements for dealers in foreign exchange and brokers or dealers in securities.

Affected Public: Businesses or other for-profit institutions, and non-profit institutions.

Type of Review:

- Renewal without change of a currently approved information collection.
- Propose for review and comment a renewal of the portion of the PRA burden that has been subject to notice and comment in the past (the “traditional annual PRA burden”).
- Propose for review and comment a future expansion of the scope of the PRA burden (the “future annual PRA burden”).

Frequency: As required.

Estimated Number of Respondents: 4,563 financial institutions.⁹

Estimated Recordkeeping Burden:

In Part 1 of this notice, FinCEN describes the breakdown of the estimated number of financial institutions, by type, affected by each of the regulatory requirements. In Part 2, FinCEN proposes for review and comment a renewal of the estimate of the traditional annual PRA hourly burden, which includes an annual hourly burden estimate per financial institution similar to that used in the past, with the incorporation of a more robust cost estimate. The scope and methodology used in the past assigned a total annual

⁸ Public Law 104-13, 44 U.S.C. 3506(c)(2)(A).

⁹ Table 1 below sets forth a breakdown of the types of financial institutions covered by this notice.

hourly burden estimate, per financial institution, to multiple recordkeeping requirements within the regulations. In Part 3, FinCEN proposes for review and comment a methodology to estimate the hourly burden and the cost of a future estimate of an annual PRA burden that includes the burden and cost broken down by each unique type of recordkeeping requirement covered by the regulations being renewed. The methodology also includes identifying estimates for the number of transactions conducted annually, per financial institution, which would trigger each unique recordkeeping requirement. Finally, in Part 4, FinCEN solicits input from the public about: (a) the accuracy of the estimate of the traditional annual PRA burden; (b) the method proposed to be more granular in the calculation of burden per unique recordkeeping requirement, within the regulations, to establish a future annual PRA burden; (c) the criteria, metrics, and most appropriate questions FinCEN should consider when researching the information to estimate the future annual PRA burden, according to the methodology proposed; and (d) any other comments about the regulations and the current and proposed future hourly burden and cost estimates of these requirements.

Part 1. Breakdown of the financial institutions covered by this notice

The breakdown of financial institutions, by type, covered by this notice is reflected in Table 1 below:

Table 1. Breakdown of financial institutions covered by this notice, by type of financial institution

Type of Financial Institution	Number of Financial Institutions
Dealers in foreign exchange	923 ¹⁰
Brokers or dealers in securities	3,640 ¹¹
Total number of financial institutions	4,563

¹⁰ This number is derived from self-reported information in MSB registrations submitted to FinCEN. FinCEN's MSB registration database is available at <https://www.fincen.gov/msb-state-selector>.

¹¹ According to the Securities and Exchange Commission (SEC), there were 3,640 brokers or dealers in securities registered with the SEC, as of March 31, 2020.

Part 2. Traditional annual PRA burden and cost

OMB control number 1506-0052

31 CFR 1022.410(a)

Each dealer in foreign exchange must make and maintain a record of the taxpayer identification number of certain persons for whom a transaction account is opened or a line of credit is extended within 30 days of opening such an account or extending such a line of credit, or longer if the person has applied for a taxpayer identification or social security number. A dealer in foreign exchange must also maintain a list containing the names, addresses, and account or credit line numbers of those persons from whom it has been unable to secure such information despite reasonable efforts.

31 CFR 1022.410(b)

Each dealer in foreign exchange must retain the original or a copy of nine types of documents as described in Section I – Statutory and Regulatory Provisions above.

Due to the challenges of obtaining the total number of such records required to be maintained by dealers in foreign exchange under 31 CFR 1022.410, in its most recent control number renewal, FinCEN estimated that the annual recordkeeping burden per dealer in foreign exchange for these requirements was 16 hours.¹² FinCEN continues to estimate that the annual hourly burden of complying with 31 CFR 1022.410 is 16 hours per dealer in foreign exchange.

923 dealers in foreign exchange¹³ multiplied by 16 hours, results in a total annual hourly burden estimate of 14,768 hours.

OMB control number 1506-0053

31 CFR 1023.410(a)

¹² 82 FR 31686, 31687 (July 7, 2017).

¹³ See Table 1, *supra*.

As noted above, brokers or dealers in securities have no recordkeeping responsibilities under this provision; the obligation on brokers or dealers in securities to maintain customer identification programs pursuant to 31 CFR 1023.220 has effectively replaced these responsibilities.

31 CFR 1023.410(b)

Each broker or dealer in securities must retain an original or copy of certain types of documents as described in Section I - Statutory and Regulatory Provisions above.

Due to the challenges of obtaining the total number of such records required to be maintained by brokers or dealers in securities, in its most recent control number renewal, FinCEN estimated that the annual recordkeeping burden per broker or dealer in securities for these requirements was 100 hours.¹⁴ FinCEN continues to estimate that the annual hourly burden of complying with 31 CFR 1023.410 is 100 hours per broker or dealer in securities.

3,640 brokers or dealers in securities¹⁵ multiplied by 100 hours, results in a total annual hourly burden estimate of 364,000 hours.

Total Annual Traditional PRA Hourly Burden for OMB Control Numbers 1506-0052 and 1506-0053.

FinCEN's estimate of the traditional annual PRA burden, therefore, is 378,768 hours, as detailed in Table 2 below:

Table 2. Breakdown of financial institutions impacted by each regulatory requirement, and the estimated total annual burden hours per requirement

Regulatory Requirement	Type of Financial Institution Impacted by the Requirement	Number of Financial Institutions	Traditional Annual Burden Estimate per Financial Institution	Total Annual Burden Hours per Regulatory Requirement

¹⁴ 82 FR 31686, 31687 (July 7, 2017).

¹⁵ See Table 1, *supra*.

Regulatory Requirement	Type of Financial Institution Impacted by the Requirement	Number of Financial Institutions	Traditional Annual Burden Estimate per Financial Institution	Total Annual Burden Hours per Regulatory Requirement
31 CFR 1022.410 – OMB Control Number 1506-0052	Dealers in foreign exchange	923	16 hours	14,768
31 CFR 1023.410 – OMB Control Number 1506-0053	Brokers or dealers in securities	3,640	100 hours	364,000
Total annual hour burden hours				378,768

To calculate the hourly costs of the burden estimate, FinCEN identified three roles and corresponding staff positions involved in maintaining records as required by 31 CFR 1022.410 and 1023.410: (i) general supervision (providing process oversight); (ii) direct supervision (reviewing operational-level work and cross-checking all or a sample of the work product against supporting documentation); and (iii) clerical work (engaging in recordkeeping).

FinCEN calculated the fully-loaded hourly wage for each of these three roles by using the median wage estimated by the U.S. Bureau of Labor Statistics (BLS),¹⁶ and computing an additional benefits cost as follows:

Table 3. Fully-loaded hourly wage by role and BLS job position for all financial institutions covered by this notice

Role	BLS-Code	BLS-Name	Median Hourly Wage	Benefit Factor	Fully-loaded Hourly Wage
General supervision	11-3031	Financial Manager	\$62.45	1.50	\$93.68
Direct supervision	13-1041	Compliance Officer	\$33.20	1.50	\$49.80
Clerical work (research, review, and recordkeeping)	43-3099	Financial Clerk	\$20.40	1.50	\$30.60

¹⁶ The U.S. Bureau of Labor Statistics, Occupational Employment Statistics-National, May 2019, available at <https://www.bls.gov/oes/tables.htm>. The most recent data from the BLS corresponds to May 2019. For the benefits component of total compensation, see U.S. Bureau of Labor Statistics, Employer's Cost per Employee Compensation as of December 2019, available at <https://www.bls.gov/news.release/ecec.nr0.htm>. The ratio between benefits and wages for financial activities is \$15.95 (hourly benefits)/\$32.05 (hourly wages) = 0.50. The benefit factor is 1 plus the benefit/wages ratio, or 1.50. Multiplying each hourly wage by the benefit factor produces the fully-loaded hourly wage per position.

FinCEN estimates that, *in general and on average*,¹⁷ each role would spend different amounts of time on each portion of the traditional annual PRA burden, as follows:

The cost of each hour of burden, broken down by role, to produce and maintain records as outlined in 31 CFR 1022.410 and 31 CFR 1023.410 would be \$37.00 as set out in Table 4 below:

Table 4. Weighted average hourly cost of making and retaining the records

General Supervision		Direct Supervision		Clerical Work		Weighted Average Hourly Cost
% Time	Hourly Cost	% Time	Hourly Cost	% Time	Hourly Cost	
5%	\$4.68	15%	\$7.47	80%	\$24.48	\$37.00

\$36.63 rounded to \$37.00

The total estimated cost of the traditional annual PRA burden is \$14,014,416, as reflected in Table 5 below:

Table 5. Total cost of traditional annual PRA burden

OMB Control Number/Regulation	Hourly Burden	Hourly Cost	Total Cost
1506-0052 (31 CFR 1022.410)	14,768	\$37	\$546,416
1506-0053 (31 CFR 1023.410)	364,000	\$37	\$13,468,000
Total cost			\$14,014,416

Part 3. Future annual PRA burden

In the future, FinCEN will include the burden and cost for each type of recordkeeping requirement covered by the regulations being renewed. The future burden estimate will also include estimates of the number of transactions conducted annually per financial institution, which trigger each recordkeeping requirement.

31 CFR 1022.410(a)

¹⁷ By “in general,” FinCEN means without regard to outliers (e.g., financial institutions with accounts or transactions that require recordkeeping that is uncommonly higher or lower than those of the population at large). By “on average,” FinCEN means the mean of the distribution of each subset of the population.

Each dealer in foreign exchange must make and maintain a record of the taxpayer identification number of certain persons for whom a transaction account is opened or a line of credit is extended within 30 days of opening such an account or extending such a line of credit, or longer if the person has applied for a taxpayer identification or social security number. A dealer in foreign exchange must also maintain a list containing the names, addresses, and account or credit line numbers of those persons from whom it has been unable to secure such information despite reasonable efforts. In order to more accurately estimate the related PRA burden in the future, FinCEN intends to obtain a better understanding of the volume of transaction accounts and lines of credit opened per year by dealers in foreign exchange.

31 CFR 1022.410(b)

As described in greater detail in Section I - Statutory and Regulatory Provisions above, each dealer in foreign exchange must retain the original or a copy of nine types of documents. In order to more accurately estimate the related PRA burden in the future, FinCEN intends to obtain a better understanding of the volume of transactions that trigger such recordkeeping requirements per year by dealers in foreign exchange.

31 CFR 1023.410(b)

Each broker or dealer in securities must retain an original or copy of certain types of documents as described in Section I - Statutory and Regulatory Provisions above. In order to more accurately estimate the related PRA burden in the future, FinCEN intends to obtain a better understanding of the volume of transactions that trigger such recordkeeping requirements per year by brokers or dealers in exchange.

FinCEN does not have the information needed to estimate the number of annual transactions that trigger each recordkeeping requirement being renewed in this notice. For that reason, FinCEN is relying on estimates used in prior renewals of these OMB control numbers and the applicable regulations. FinCEN further recognizes that after receiving

public comments as a result of this notice, future annual PRA hourly burden and cost estimates may vary significantly. In order to arrive at more precise estimates of net BSA hourly burden and cost, FinCEN intends to conduct more granular studies in the near future, regarding the types and volume of transactions conducted annually, which trigger each recordkeeping requirement, and the time it takes to collect and record the information required for each recordkeeping requirement.¹⁸ The data obtained in these studies also may result in a significant variation of the estimated annual PRA burden.

Estimated Number of Respondents: 4,563 financial institutions, as set out in Table 1.

Estimated Total Annual Recordkeeping Burden: The estimated total annual PRA burden is 378,768 hours, as set out in Table 2.

Estimated Total Annual Recordkeeping Cost: The estimated total annual PRA cost is \$14,014,416, as set out in Table 5.

An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Records required to be retained under the BSA must be retained for five years.

Part 4 – Request for Comments

a) Specific request for comments on the traditional annual PRA hourly burden and cost.

FinCEN invites comments on any aspect of the traditional annual PRA burden, as set out in Part 2 of this notice. In particular, FinCEN seeks comments on the adequacy of:

¹⁸ Net hourly burden and cost are the burden and cost a financial institution incurs to comply with requirements that are unique to the BSA, and that do not support any other business purpose or regulatory obligation of the financial institution. Burden for purposes of the PRA does not include the time and financial resources needed to comply with an information collection, if the time and resources are for things a business (or other person) does in the ordinary course of its activities if the agency demonstrates that the reporting activities needed to comply are usual and customary. 5 CFR 1320.3(b)(2). For example, depending on the nature of the account or transaction, a financial institution may be collecting and maintaining some of the same information on an account or transaction that is required to be recorded in 31 CFR 1022.410 and 31 CFR 1023.410 in order to satisfy other obligations. Those obligations may include (i) protecting the financial institution from fraud against itself or its customers, (ii) complying with other non-BSA regulatory requirements such as those imposed by the specific Federal functional regulator, or (iii) maintaining proper accounting information.

(i) FinCEN's assumptions underlying its estimate of the burden; (ii) the estimated number of hours required by each portion of the burden; and (iii) the organizational levels of the financial institution engaged in each portion of the burden, their estimated hourly remuneration, and the estimated proportion of participation by each role. FinCEN encourages commenters to include any publicly available sources for alternative estimates or methodologies.

b) Specific request for comments on the proposed criteria for determining the scope of a future annual PRA hourly burden and cost estimate.

FinCEN invites comments on any aspect of the criteria for a future estimate of the annual PRA burden, as set out in Part 3 of this notice.

c) Specific request for comments on the appropriate criteria, methodology, and questionnaire required to obtain information to more precisely estimate the future annual PRA hourly burden and cost.

FinCEN invites comments on the most appropriate and comprehensive means to question financial institutions about the annual hourly burden and cost attributable solely to the regulations covered by this notice (i.e., the hourly burden and cost of complying with the recordkeeping requirements imposed exclusively by the BSA, which are not used to satisfy contractual obligations, other regulatory requirements, or business purposes of the financial institution). The future annual PRA hourly burden and cost estimate must take into consideration only the information collected and recorded that is used exclusively to comply with requirements under 31 CFR 1022.410 and 31 CFR 1023.410.

FinCEN seeks comments from the public regarding any questions we should consider posing in future notices, in addition to the specific questions for comment outlined directly below. Also, due to the difficulty involved in estimating the number of transaction accounts, lines of credit, and transactions that trigger recordkeeping

requirements, as described in this notice, FinCEN welcomes any suggestions as to how to derive these estimates by using publicly available financial information.

d) Specific questions for comment associated with making and retaining records

required by the regulations described in this notice:

1) Complying with 31 CFR 1022.410(a)

- On average, how many transaction accounts or lines of credit does your dealer in foreign exchange open/extend annually, which trigger the recordkeeping requirement in 31 CFR 1022.410(a)?
- On average, how long does it take your dealer in foreign exchange to collect and retain the records required to be maintained when you open a transaction account or extend a line of credit?

2) Complying with 31 CFR 1022.410(b)

- On average, how often does your dealer in foreign exchange conduct each of the transactions described in 31 CFR 1022.410(b), as explained in further detail in Section I - Statutory and Regulatory Provisions?
- On average, how long does it take your dealer in foreign exchange to collect and retain the records required to be maintained when you conduct one of the transactions described in 31 CFR 1022.410(b)?

3) Complying with 31 CFR 1023.410(b)

- On average, how often does your broker or dealer in securities conduct each of the transactions described in 31 CFR 1023.410(b), as explained in further detail in Section I - Statutory and Regulatory Provisions?
- On average, how long does it take your broker or dealer in securities to collect and retain the records required to be maintained when you conduct one of the transactions described in 31 CFR 1023.410(b)?

e) General request for comments.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (i) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (ii) the accuracy of the agency's estimate of the burden of the collection of information; (iii) ways to enhance the quality, utility, and clarity of the information to be collected; (iv) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (v) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

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